

REMARKS

Applicants appreciate the indication by the Office that the finality of the rejections of the previous Office Action have been withdrawn, that applicants' amendments to the claims have been entered, and that the previous rejections have been withdrawn. A new rejection is made. Claims 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41 and 43-48 are rejected under 34 U.S.C. §103 from Takeuchi U.S. Patent No. 6,835,408 in view of Swern (pages 54-55, 179-180 and 211) and further in view of Wester U.S. Patent No. 6,589,588. This rejection is a totally new rejection that incorporates newly applied references. Applicants accordingly request entry of this Amendment Under Rule 116 as placing the application into condition for allowance or placing same into better form for appeal. Alternatively, withdrawal of the finality of the present Office Action is respectfully requested in order to provide applicants an adequate opportunity to respond to this new rejection.

The present Amendment revises the single independent composition claim, the single method-for-making independent claim, and the single independent method-for-using claim. Each such claim specifies that the medium chain triglycerides (MCTs) are at about **25 weight percent or above**. Also, the claimed liquid interesterified structured lipid has a **Brookfield viscosity** at 20°C of between about 20 and 52 centipoise, and a **smoke point** of at least about 195°C (at least about 383°F). Dependent claims 7 and 29 recites that the MCTs are at least about 30 weight percent, and dependent claims 11, 27 and 41 recite a smoke point of at least about 205°C (greater than about 400°F). In addition, dependent claims 15 and 47 recite that the

liquid oil composition is a clear liquid and remains clear for at least about six months of storage at about 21°C., support therefor being found in, for example, original claim 10.

The new primary reference Takeuchi discloses and claims various forms of oil or fat compositions that includes medium-chain fatty acids in the amount of 5 to 23% by mass in all the fatty acids comprising the oil or fat composition. Thus, in Example 1, Takeuchi teaches 20 mass parts of MCT in a random transesterification, and Takeuchi Comparative Example 1 describes 25 mass parts of MCT in random transesterification to prepare a fatty acid composition, namely Comparative Composition 9 that is indicated by Takeuchi as being inferior. More specifically, at the bottom of column 11, Takeuchi states that Comparative Composition 9 did not achieve the lower level of body fat accumulation according to the Takeuchi invention.

Takeuchi would have taught one of ordinary skill in the art to avoid formulations with 25 mass parts of MCT if one wishes to achieve the lowered body fat accumulation of Takeuchi. Contrary to this teaching, applicants claim a minimum of 25 weight percent MCTs.

This difference is important and provides unique results. As pointed out in paragraph [0014] of applicants' specification, the liquid structured lipid component that applicants claim has been found by applicants to be very suitable for combining with phytosterol esters as applicants claim in order to provide lipid-plus-phytosterol compositions that are liquid at room temperature and below. Also, this claimed combination **delivers the phytosterols into the body with enhanced functionality**, with the MCT structure fostering oil metabolism within the body. Included as a positive effect is minimizing adipose tissue deposition. See paragraphs [0044] and [0043] of

applicants' specification. Applicants have found, contrary to the teaching of Takeuchi, that **MCT levels that are above the level taught by Takeuchi** provide the enhanced functionality that is achieved by the compositions and methods of applicants.

Accordingly, Takeuchi teaches to formulate an MCT-containing composition having a lower MCT level than that claimed by applicants and found by applicants to achieve important functionality, an approach that is contrary to the teachings of Takeuchi. This difference is further emphasized by applicants' dependent claims 7 and 29, reciting an MCT level of at least about 30 weight percent.

Furthermore, as described in some detail in applicants' Example 15, the claimed compositions achieve **phytosterol delivery enhancement to a very significant extent**, ranging between an enhancement of **4.5 times to a 7-fold increase** in phytosterol delivery into the body. The liquid composition and the MCT-based liquid structured lipid component achieve these important benefits that are not possible according to the teachings of Takeuchi.

Neither of the secondary references remove this deficiency of Takeuchi or provide a teaching of MCT levels greater than that in Takeuchi or in utilizing MCT levels claimed by applicants in an interesterified liquid oil composition.

Wester is cited to show that incorporation of phytosterol esters into foods acts to lower cholesterol of the body. Applicants have acknowledged all along that phytosterol esters are known for lowering cholesterol in a living being. While Swern indicates that wheat germ oil naturally contains some free sterol and sterol ester, Swern cited pages 54-55 do not teach adding additional quantities of phytosterol esters beyond what might be found in a given edible oil. Clearly, there is nothing in Swern or Wester to teach

combining phytosterol esters with applicants' claimed liquid transesterified lipid to achieve the functionality taught by applicants, including phytosterol delivery enhancement of at least 4.5 times.

Additionally, page 54 of Swern discourages exploiting sterols in wheat germ oil other than that one should isolate them "because they constitute starting materials for the synthesis of sex hormones and for the preparation of synthetic vitamin D." The teachings of Swern on cited pages 54-55 would have discouraged the addition of further phytosterol esters to any of the oils listed, including wheat germ oil. They should be removed, not added.

From the above, although the Office has made an observation concerning wheat germ oil as being an oil common to both Takeuchi and Swern, applicants respectfully observe that this is not enough to overcome the *prima facie* evidence of unobvious that is present in applicants' description. Applicants refer primarily to the important advantage of phytosterol delivery with enhanced phytosterol functionality, together with from a 4.5-to a 7-fold increase in phytosterol delivery into the body when the phytosterol ester (even if same were according to a reference such as Wester) is put into applicants' claimed composition that includes the interesterified MCT-containing liquid structured lipid component that has a Brookfield viscosity as claimed to facilitate such important enhanced functionality and increased delivery.

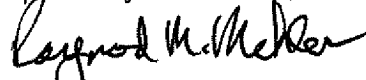
Concerning the other passages of Swern that are cited, pages 179-180 and 211 of Swern, applicants do not dispute that it is known to report upon viscosity and smoke point values of triglycerides. Of course, Swern does not teach viscosity or smoke point of the liquid structured lipid interesterified ester with MCTs that fall under applicants'

claims. Furthermore, neither Swern nor any of the other references teach that one can achieve the enhanced functionality discussed herein and reported in applicants' specification while also providing a smoke point that is high enough to be suitable for use as a frying oil. Applicants recognize that Takeuchi mentions deep frying, such as in Example 9; however, it must be appreciated that Example 9 relates to formulations that do not include any phytosterol component. Accordingly, Takeuchi does not teach good smoke point characteristics when added phytosterol components are included in the tested composition. The claimed compositions and methods of applicants avoid a smoking problem for phytosterol inclusion. This has been done in a novel and unobvious manner, namely by combining the phytosterol component in a composition that incorporates the novel and unobvious liquid structured lipid interesterified component of applicants' claims.

Reconsideration and withdrawal of the newly presented § 103 rejection are respectfully requested.

Applicants have made an earnest endeavor to place all of the claims of this application into allowable form, and favorable consideration is requested.

Respectfully submitted,



/Raymond M. Mehler/

Raymond M. Mehler

Registration No.: 26,306

COOK, ALEX, MCFARRON, MANZO,
CUMMINGS & MEHLER, LTD.
200 West Adams Street
Suite 2850
Chicago, Illinois 60606
(312) 236-8500
Dated: November 26, 2007